

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-3203

Otto J. Rose,

Plaintiff-Appellant,

v.

Wal-Mart Stores, Inc.,

Defendant-Appellee.

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Appeal from the United States
District Court for the
District of Minnesota.

[UNPUBLISHED]

Submitted: May 17, 2002

Filed: June 24, 2002

Before LOKEN, HEANEY, and MURPHY, Circuit Judges.

PER CURIAM.

Otto J. Rose fell and was injured while shopping at a Wal-Mart store and brought this negligence action against the parent company. The case was tried to a jury which returned a verdict in Rose's favor. After judgment was entered, Wal-Mart filed a motion to set aside the verdict and grant it judgment as a matter of law or grant a new trial on a number of grounds. The presiding magistrate judge decided to hold an evidentiary hearing on the motion and heard from several witnesses, after which the court ordered a new trial in the interests of justice. The case went to trial again, and this time the jury verdict was in favor of Wal-Mart. Rose appeals, arguing that the court failed to comply with procedural rules and abused its discretion in granting

a new trial. The decision whether to grant a motion for a new trial is reviewed for abuse of discretion. Walzer v. St. Joseph State Hosp., 231 F.3d 1108, 1111 (8th Cir. 2000). Upon examination of the record and the transcript, we cannot say that the court's decision to grant a new trial represented an abuse of its discretion. We therefore affirm the judgment.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.